IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

ALASKANS FOR BETTER ELECTIONS, Plaintiff,	)	
vs.	)	
KEVIN MEYER, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA and STATE OF ALASKA, DIVISION OF ELECTIONS, Defendants.	)	Case No. 3AN-19-09704 CI

ORDER DENYING DEFENDANTS' MOTION FOR STAY PENDING APPEAL

On October 28, 2019, Defendants filed a motion for stay of the Order Granting Plaintiff's Cross-Motion for Summary Judgment and Denying Defendants' Motion for Summary Judgment, together with the related orders that 19AKBE should be certified and Defendants must distribute petition signature booklets immediately. Having reviewed the motion and opposition, the Court denies the request for a stay pending appeal.

Trial courts have discretion to grant a stay pending appeal.[1] The parties agree that the legal standard applicable to Defendants' request for a stay of the October 28, 2019 Order is a "heightened standard of a 'clear showing of probable success on the merits.'"[2]

[1] Alaska R. Civ. P. 62.
[2] *State, Div. of Elections v. Metcalfe*, 110 P.3d 976, 978 (Alaska 2005) (quoting *State v. Native Vill. of Copper Ctr.*, 831 P.2d 1270, 1272 n.4 (Alaska 1992)).

It is appropriate to apply this standard to the request for a stay because the irreparable harm Plaintiff faces if a stay is granted cannot be adequately protected by the posting of a bond.[3] The posting of a bond fails to protect the time that Plaintiff will lose to gather signatures by January 20, 2020 in an attempt to place 19AKBE on the November 2020 ballot.

Defendants assert that they are likely to succeed on the merits on appeal because 19AKBE violates the single-subject rule and the Alaska Supreme Court will be in a position to overrule its precedent. As set forth in the October 28, 2019 Order, it is this Court's opinion that 19AKBE does not violate the single-subject rule based on application of the test utilized in eight prior Alaska Supreme Court decisions. To the extent that Defendants argue that the Alaska Supreme Court is likely to overrule its precedent, the Court notes that the Alaska Supreme Court previously considered this exact question and declined to overrule the prior cases.[4] In *Yute Air Alaska, Inc. v. McAlpine*, the Alaska Supreme Court provided three reasons why it would not overrule its precedent interpreting the single-subject rule: (1) "[I]t is not at all clear that there are workable stricter standards;" (2) "[T]he sponsors of the initiative have relied on our precedents in preparing the present proposition and undertaking the considerable expense and time and effort needed to place it on the ballot;" and (3) "[A]n initiative is an act of

[3] *See Alsworth v. Seybert*, 323 P.3d 47, 54-55 (Alaska 2014).
[4] *Yute Air Alaska, Inc. v. McAlpine*, 698 P.2d 1173, 1180-81 (Alaska 1985).

direct democracy guaranteed by our constitution."[5] The Alaska Supreme Court has had two opportunities since the *Yute Air* decision to overrule its precedent and instead has consistently applied the same test. The 2010 *Croft* decision acknowledged that the Alaska Supreme Court has "consistently articulated the substance of the test to reflect" a broad construction of the rule.[6] The Alaska Supreme Court pointed out that "[i]n each of the seven cases in which this court has addressed a single-subject challenge, we upheld the challenged bill or initiative by determining that all provisions related to a single general subject, theme, or purpose."[7]

The Alaska Supreme Court has not addressed the single-subject rule since the 2010 *Croft* decision. But based on the existing caselaw regarding the obligation to follow precedent[8] and the standard applicable to requests to overrule precedent, Defendants have not made a clear showing of probable success on the merits in this case. The Alaska Supreme Court has indicated that it "will overrule a prior decision only when 'clearly convinced that the rule was originally erroneous or is no longer sound because of changed conditions, and that more good than harm would result from a departure from

[5] *Id.*
[6] *Croft v. Parnell*, 236 P.3d 369, 373 (Alaska 2010).
[7] *Id.*
[8] "The doctrine of precedent is a common law doctrine under which courts are bound by prior decisions in their consideration of new cases. Precedent is a judge-made rule designed to constrain judicial decisionmaking by requiring that prior decisions with similar relevant facts be followed or, if they are not followed, that the reasons for departing from the prior rule be explained. Two types of stare decisis have been identified: horizontal stare decisis and vertical stare decisis. Horizontal stare decisis binds the issuing court to its own prior decisions. Vertical stare decisis requires that lower courts of lower rank follow decisions of higher courts. Vertical stare decisis has a stronger effect, in that lower courts generally cannot overrule decisions of higher courts, whereas a court may, given adequate reasons to do so, overrule itself." *Alaska Public Interest Research Group v. State*, 167 P.3d 27, 43-44 (Alaska 2007).

precedent.'"[9] The Alaska Supreme Court further explained that "[a] decision may prove to be originally erroneous if the rule announced proves to be unworkable in practice."[10] Here, it appears that the single-subject rule announced is workable in practice. The *Croft* decision itself is an example of the rule working in practice. In addition, the Court is unaware of changed conditions to overcome the rule of stare decisis.

Because Defendants do not satisfy the heightened standard of a clear showing of probable success on the merits, the Court denies the Motion for Stay Pending Appeal.

DATED at Anchorage, Alaska this 30th day of October 2019.

Yvonne Lamoureux
Yvonne Lamoureux
Superior Court Judge

I certify that on 10-30-19 the above
was emailed to the parties of record:

J. Lindemuth
S. Kendall
C. Mills
M. Paton-Walsh

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[9] *Pratt & Whitney Canada, Inc. v. Sheehan*, 852 P.2d 1173, 1176 (Alaska 1993).
[10] *Id.*